

DATE: January 29, 1998
CASE NO. 97-DBA-0002

IN THE MATTER OF:

Disputes concerning the payment
of prevailing wage rates and overtime pay by:

REPUBLIC WESTERN INSURANCE CO., INC.
Surety and Completing Contractor

With respect to Laborers and
Mechanics employed by the contractor
UNIVERSAL CONSTRUCTION MANAGEMENT
CORP., INC., and J.I. Martinez, Inc.

Contract No. NJ6-1
(Jobsite: William Dunlap Homes,
Perth Amboy, New Jersey
Contracting Agency: Perth Amboy
Housing Authority)

DECISION AND ORDER APPROVING SETTLEMENT

This matter arose from a Determination by the Acting Regional Administrator, Wage and Hour Division, Employment Standards Administration that Republic Western Insurance Company, Inc., Prime Contractor, has committed violations of the labor standards under the U.S. Housing Act of 1937, as amended (42 U.S.C. 1537j); the Contract Work Hours and Safety Standards Act, as amended; and Department of Labor Regulations, 29 CFR Part 5. A detailed Consent Findings signed by James J. Ross, Attorney for the Respondent Republic Western Insurance Co., Inc. and John G. Campbell, Attorney for the U.S. Department of Labor, is hereby attached (designated as Joint Exhibit 1).

The Consent Findings and Order has been presented to the undersigned by John G. Campbell, Esquire, counsel for the Secretary of Labor, and the parties have requested that the settlement agreement be approved as follows:

CONSENT FINDINGS AND ORDER

The parties herein represent that they have reached an accord to resolve this matter, and to that end hereby stipulate and agree that:

1. At all relevant times, Respondent Republic Western Insurance Company, Inc., having had its principal office and place of business at 6245 East Broadway Boulevard, Tucson, Arizona, was engaged in the business of supplying performance and payment bonds on construction sites.
2. The Perth Amboy Housing Authority ("the Housing Authority") awarded the Universal Construction and Management Corporation, Inc. ("Universal"), the prime contractor in the instant matter, Contract #NJ6-1 ("the Contract"), to perform renovations on the Community Center and Management Office Building of the William Dunlap Homes facility at Perth Amboy, New Jersey ("the site"). This contract was issued to Universal by the Housing Authority under the Housing Act of 1937, 42 U.S.C. § 1437J.
3. Universal engaged the services of J.I. Martinez, Inc. ("Martinez"), an electrical subcontractor, as a subcontractor on the site.
4. Federal Wage Determination NJ 91-3 Mod 27 was attached to and incorporated by reference into the Contract and governed the payment of prevailing wages and overtime by Universal and Martinez.
5. The respondent Republic issued to Universal Performance and payment bonds covering work done at the site under the Contract on June 17, 1993, and at all relevant times to this matter acted as surety and completing contractor to Universal on the Contract.
6. The respondent Republic concedes that underpayments of prevailing wages and overtime required by the applicable Act, the Contract, and the regulations issued by the Secretary of Labor at 29 C.F.R. ¶ 5 were made from time to time by Universal and Martinez to laborers and mechanics employed on the Contract.
7. The Housing Authority is presently withholding funds from universal's Contract # NJ6-1 in an escrow account pursuant to 29 C.F.R. ¶ 5.59(a)(2) and an Order of the United States District Court for the District of New Jersey in a matter captioned *Republic Western Insurance Company v. The Housing Authority of the City of Perth Amboy et al.*, Civil Action File No. 95-5386 (DRD), dated November 20, 1995, a copy of said Order being attached hereto and made part hereof as Joint Exhibit 1.

8. Respondent Republic agrees that the mechanics and laborers employed by Universal and Martinez and listed on Joint Exhibit 2 attached hereto and part hereof, are owed a total of \$165,000 currently withheld by the Housing Authority, to be distributed by the Department of Labor as set forth in Joint Exhibit 2.
9. The respondent, Republic Western Insurance Company, Inc., by this stipulation, authorizes the Housing Authority to distribute the sum of \$165,000 referenced in ¶ 8 above to the Wage and Hour Division, U.S. Department of Labor to be allocated in accordance with Joint Exhibit 2. Any amounts in excess of the sum of \$165,000 withheld by the Housing Authority shall be distributed to the Respondent.
10. The parties represent to the Court that debarment of the Respondent as a contractor on sites subject to wage payment rates issued pursuant to the Davis-Bacon and Related Acts is not at issue in this matter.
11. The U.S. Department of Labor shall distribute the back wages, less appropriate deductions for social security and withholding taxes, to the employees, or their legal representatives, in amounts set forth in Joint Exhibit 2. Any such amounts which remain undistributed for one year because of the parties' inability to locate the employee or representative shall be deposited with the Treasurer of the United States.
12. The parties, U.S. Department of labor and Respondent Republic Western Insurance Company, Inc. agree that this Order disposing of this proceeding in accordance with this Stipulation shall have the same force and effect as an order made after full hearing pursuant to 29 C.F.R.¶ 5.11 and in accordance with 29 C.F.R.¶ 18.9(b)(1).
13. The parties further agree that this Order disposing of this proceeding in accordance with this Stipulation shall be a complete and binding resolution of any and all claims arising out of the Contract, whether those claims be cognizable under federal, state or local law, or in any federal, state, or local court or administrative tribunal. The parties specifically agree to the dismissal, with prejudice, of an action in the United States District Court for the District of New Jersey captioned *Republic Western Insurance Company v. The Housing Authority of the City of Perth Amboy, et al.*, Civil Action File No. 95-5386 (DRD) upon receipt of their respective shares of escrow funds.

14. The entire record on which this Final Order is based consists solely of the provisions contained in this Stipulation of Compliance (29 C.F.R. ¶ 18.9(b)(2)).
15. The parties through agreement hereby waive any further procedural steps before an Administrative Law Judge of the U.S. Department of Labor regarding this matter (29 C.F.R. ¶ 18.9(B)(3)).
16. Respondent hereby waives any right to challenge or contest the validity of these Findings and Order entered into in accordance with the agreement (29 C.F.R. ¶ 18.9(b)(3)).
17. Each party hereby agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

I have carefully considered the facts involved in this case and the difficult legal and factual questions in dispute, and, upon careful evaluation of same, I conclude that the settlement is fair and in the best interest of the parties. Moreover, I find that the Settlement was arrived at without duress, and only after full exploration by the parties of all issues in dispute.

Accordingly, it is hereby **ORDERED** that the Consent Findings and Order be, and hereby is **APPROVED**.

PAUL H. TEITLER
Administrative Law Judge

PHT:abr